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statutory damage amounts,¹ emphasis added). *See also Mackie v. Reiser*, 296 F.3d at 915, n. 6 (“A suit for copyright infringement may be analogized to other tort actions; all infringers are jointly and severally liable. [Citation omitted].”); *Walt Disney Co. v. Powell*, 897 F.2d 565, 570 (D.C. Cir. 1990) (infringing use of Mickey & Minnie Mouse images in numerous poses infringed only two works); *Branch v. Ogilvy & Mather, Inc.*, 772 F.Supp. 1359, 1364 (S.D.N.Y., 1991) (“where two or more defendants contributed to the infringement, they are all jointly and severally liable for the award of statutory damages.”); *Bouchat v. Champion Products, Inc.*, 327 F.Supp.2d 537 (D. Md., 2003) (one award against multiple entities in distribution chain) .

(H) **PREVIOUS MOTIONS:** Exhibit C contains a table listing the motions that have been made throughout the history of this matter.

(I) **WITNESSES TO BE CALLED:** 

In accordance with the Court’s May 2, 2005 Amended Scheduling Order, the Fleming Post-Confirmation Trust and the former Fleming employees intend to

¹ “A single infringer of a single work is liable for a single amount between \$250 and \$10,000, *no matter how many acts of infringement are involved in the action* and regardless of whether the acts were separate, isolated, or occurred in a related series. . . . Subsection (c)(1) makes clear, however, that although they are regarded as independent works for other purposes, ‘*all the parts of a compilation or derivative work constitute one work*’ for this purpose. . . . Similarly, where the work was infringed by two or more joint tortfeasors, [they are] jointly and severally liable for *an amount* in the \$250 to \$10,000 range.” (Quote references previous statutory amounts).

submit their full and binding witness list on January 3, 2006. Subject to that qualification, the Fleming Post-Confirmation Trust and the former Fleming employees preliminarily identify the following witnesses:

~~Fact witnesses:~~ One or more of the former Fleming employees (Mark Dillon, Teresa Noa, Melvin Ponce, Sonia Purdy, Justin Fukumoto, Alfreda Waiolama, and Jacqueline Rio) concerning operation of Plaintiff's Freight Control Software and the relationship of that freight tracking system to business operations. Other nondefendant fact witnesses associated with the Fleming Post-Confirmation Trust or C&S Wholesale Grocers, including but not limited to Michael Scott, Barry Folse, and/or Brian Christensen, may also testify about the relationship of Plaintiff's freight tracking system to business operations, in particular with regard to issues of revenues and profits / losses.

Expert witnesses: (1) Martin Walker (operation of Freight Control Software and technical issues, and, if necessary, contents of materials produced by Guidance Software); (2) Jeff Kinrich (economic damages and profits issues); (3) Brad Dechter (industry expert concerning relationship of freight tracking software to business operations and profits).

(J) EXHIBITS, SCHEDULES, AND SUMMARIES: The Fleming Post-Confirmation Trust and the former Fleming employees intend to exchange pre-marked exhibits no later than December 27, 2005 and subsequently follow the procedures delineated in the Court's May 2, 2005 Amended Scheduling Order.